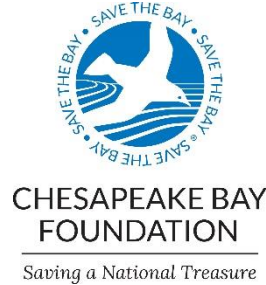
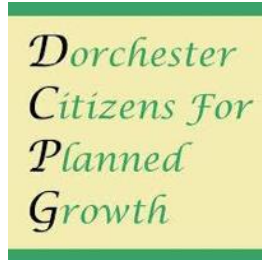


# **EXHIBIT A**



April 13, 2021

**Via Certified Mail – Return Receipt Requested**

Chris Bledsoe, General Manager  
Karl Foringer, Environmental Manager  
Valley Proteins, Inc. - Linkwood Facility  
5420 Linkwood Road  
Linkwood, MD 21835

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**Re: Notice of Intent to File Citizen Suit for Violations of the Clean Water Act, the Resource Conservation and Recovery Act, and the Maryland Water Pollution Control Act at Valley Proteins, Inc. - Linkwood Facility NPDES Permit MD0003247 (State Permit 99-DP-0024).**

To the Individuals and Entities Addressed Above:

Chesapeake Legal Alliance writes on behalf of ShoreRivers and Dorchester Citizens for Planned Growth and their members, and the Chesapeake Bay Foundation, Inc. writes on behalf of itself and its members, (hereafter “Claimants”) pursuant to Section 505 of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1365, 40 C.F.R. Part 135, in regard to violations of the CWA, 33 U.S.C. § 1251 *et seq.*, and the Maryland Water Pollution Control Act, Md. Code, § 9-301 *et seq.* of the Environment Article, and pursuant to Section 7002(a)(2) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972, for violations of RCRA at Valley Proteins, Inc. - Linkwood Facility (“Facility”, “Permittee”, or “Site”), located at 5420 Linkwood Road, Linkwood, MD 21835. The Facility discharges to the Transquaking River (the “River”), which drains to the Chesapeake Bay.

The purpose of this letter is to notify the owners and operators of the Facility, namely Valley Proteins, Inc., of Claimants’ intent to file suit regarding:

- Ongoing and continuous violations of “an effluent standard or limitation” under Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A), by the Facility’s failure to comply with National Pollutant Discharge Elimination System (“NPDES”) Permit No. MD0003247 (State Permit 99-DP-0024) (“Permit”) in at least the instances enumerated in this notice letter;
- Failure to comply with reporting requirements and other conditions of the Permit resulting in ongoing and continuous violations of “an effluent standard or limitation” under Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A);
- Violations of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), via ongoing and continuous unpermitted discharges to waters of the United States through groundwater;
- Violations of Maryland Environment Article, Sections 9-101(l) and 9-322 via unpermitted and unauthorized discharges to groundwater of the state; and
- Violations of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(1)(B), through discharges of sludge, a solid waste, into unlined lagoons located on the site which may create an imminent and substantial endangerment to health and the environment.

The Site's failure to comply with NPDES permit limits, the CWA, state law, and RCRA has injured and will continue to injure or threaten to injure the environmental, aesthetic, health, and economic interests of Claimants and their members. These injuries and risks are traceable to violations at the Facility and the correction of these ongoing violations will redress these injuries or risks. The statements herein are based on Claimants' information and belief, including, but not limited to, records obtained from the Maryland Department of the Environment ("MDE") via the Public Information Act ("PIA records" or "documents") and data on U.S. EPA's Enforcement & Compliance History Online ("ECHO") database.

Citizens are entitled to bring suit against "any person...alleged to be in violation" of an "effluent standard or limitation" established under the CWA or "an order issued by...a State with respect to such a standard or limitation." 33 U.S.C. § 1365(a)(1). Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source to waters of the United States except in compliance with, among other conditions, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342(a). Moreover, as much as \$56,460 can be imposed per day for each violation of the CWA, including permit limits or conditions. 33 U.S.C. § 1319(d).<sup>1</sup>

Pursuant to Section 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), this letter serves to notify Valley Proteins, Inc. that Claimants intend to file a citizen suit for violations of the CWA, unless corrected, in the U.S. District Court for the District of Maryland anytime beginning 60 days after the postmarked date of this letter for the Clean Water Act violations. 40 C.F.R. § 135.2(c).

Further, citizens may bring suit against any person who is in violation of any permit, standard, or regulation under RCRA or against any person who is contributing to the handling, storage, treatment, transportation or disposal of any solid waste which may present an imminent and substantial endangerment to health or the environment. 42 U.S.C. § 6972(a)(1)(A) and (B). As explained below, on information and belief, Claimants assert that the disposal of solid waste into onsite unlined lagoons is contributing to the contamination of groundwater beneath the Site at levels which may present an imminent and substantial endangerment to human health and the environment.

Thus, this letter also serves to notify that Claimants intend to file suit for violations of RCRA in the U.S. District Court for the District of Maryland any time after 90 days from the postmarked date of this letter. 42 U.S.C. § 6972(b)(2)(A). Any person who violates RCRA may be assessed a civil penalty of as much as \$25,000 per violation. Each day of violation constitutes a separate violation. 42 U.S.C. § 6928(g).

## **I. BACKGROUND**

Valley Proteins, Inc. - Linkwood Facility currently operates under NPDES Permit No. MD0003247 and State Discharge Permit No. 99-DP-0024 ("Permit"), effective March 1, 2001 to

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<sup>1</sup> See also 40 C.F.R. § 19.4 (Civil Monetary Penalty Inflation Adjustment) (effective Jan. 15, 2018).

February 28, 2006, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342(b) and has been administratively continued by the Maryland Department of the Environment (“MDE”) since 2006.<sup>2</sup> The Permit authorizes Valley Proteins to discharge pollutants via outfall 001 into the Transquaking River. The Transquaking River flows to the Chesapeake Bay. Although the Permit expired in 2006, MDE has not issued an updated permit. Valley Proteins continues to operate on the administratively continued Permit; as such it remains subject to those original Permit terms and conditions.

### **A. NPDES Permit Requirements**

The Permit contains effluent limitations and monitoring requirements for the following pollutants: Fecal Coliform, Total Residual Chlorine, Dissolved Oxygen, Total Phosphorus, pH, Biochemical Oxygen Demand (BOD<sub>5</sub>), Total Suspended Solids (TSS), Ammonia (as N), and Oil and Grease. Additionally, the Permit contains a seasonal effluent limitation and monitoring requirement for Total Nitrogen between April 1 and November 30.<sup>3</sup> The Permit also contains a number of Special Conditions and General Conditions. Particularly, the Permit Conditions require quarterly monitoring and reporting of groundwater from seven monitoring wells located throughout the Site.<sup>4</sup> Other Conditions require the Facility to report on removed substances from the Site, conduct biomonitoring, and plan and implement a strategy for nitrate reductions in groundwater and nitrogen reductions to surface waters. The Permit prohibits discharges to groundwater, and includes general maintenance and operations requirements.<sup>5</sup>

### **B. RCRA Requirements**

RCRA prohibits, among other things, the handling, storage, treatment, transportation, or disposal of any solid waste that may present an imminent and substantial endangerment to health or the environment. 42 U.S.C. § 6972(a)(1)(B).

### **C. The Facility**

Valley Proteins, Inc. - Linkwood Facility is located at 5420 Linkwood Dr, Linkwood, MD 21835. The Facility is an industrial site that renders poultry processing by-products, such as offal, blood, and feathers into marketable byproducts like feed fats and protein-rich solids. Documents indicate the facility can process between 4.5 and 20 million pounds of material a week. The Facility discharges to the Transquaking River, which flows to Fishing Bay and is tidally adjacent to the Nanticoke River. This industrial processing and rendering facility produces wastewater that was

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<sup>2</sup> Valley Proteins Linkwood Facility - NPDES Permit MD0003247 and State Discharge Permit No. 99-DP-0024 (Mar. 2001) 2-3 [hereinafter “Valley Proteins - Linkwood Facility NPDES Permit”].

<sup>3</sup> *Id.* at 2-3.

<sup>4</sup> *Id.* at 7, Special Condition N.

<sup>5</sup> *See Id.* at 4-24.

discharged at an average of 167,000 gallons per day in 2020.<sup>6</sup> The wastewater from this operation is made up of “scrubber overflows, condensate, plant wash water, and stormwater runoff.”<sup>7</sup> The Facility produces thousands of tons of waste sludge per year. This sludge is stored onsite at various locations until it is removed and disposed off-site.<sup>8</sup> The Facility is also required to operate under a nutrient management plan (“NMP”).<sup>9</sup>

#### **D. The Affected Water**

The Transquaking River (“River”) is 23.2 miles long and located in Dorchester County, Maryland. The River originates south of the East New Market area and drains into the Chesapeake Bay through the Fishing Bay.<sup>10</sup> The Transquaking River and its tributaries are designated Use I - water contact recreation, and protection of nontidal warm water aquatic life.<sup>11</sup> Additionally, parts of the lower mainstem and tributaries of the Transquaking River are designated Use II - support of estuarine and marine aquatic life and shellfish harvesting.<sup>12</sup> The River is designated for seasonal migratory fish spawning.<sup>13</sup> The Transquaking River has a Total Maximum Daily Load, submitted to EPA in 2000 for Nitrogen and Phosphorus (“2000 Nutrient TMDL”), but the waterway is still impaired.<sup>14</sup> The 2000 Nutrient TMDL also contains a waste load allocation (“WLA”) for this Facility because it is a point source discharge. The WLAs for nitrogen and phosphorus are 14,954 lbs and 1,496 lbs, respectively.<sup>15</sup> Additionally, in Maryland’s most recent Integrated Report, which identifies and lists all impaired waterbodies in the state under Section 303(d) of the Clean Water Act, the Transquaking River is listed as category 5 (the highest level of categorization meaning the waterbody is so impaired for a pollutant it requires a TMDL) for Total Suspended Solids for

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<sup>6</sup> See EPA Enforcement and Compliance History Online, *Valley Proteins Inc. - Linkwood Facility, Pollutant Loading Report (DMR)*, [https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading?permit\\_id=MD0003247&year=2020](https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading?permit_id=MD0003247&year=2020) (last accessed Apr. 12, 2021).

<sup>7</sup> Maryland Department of the Environment, *Permit (99-DP-0024) Summary Report and Fact Sheet*, 2 (2000) [hereinafter “Fact Sheet”].

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* (“Waste sludge is processed through a belt press or through an off-site composting facility before disposal on land. The facility operates under a nutrient management plan prepared by a nutrient management adviser.”)

<sup>10</sup> Maryland Department of the Environment, *Final TMDLs Approved by EPA: Transquaking River* [https://mde.maryland.gov/programs/water/tmdl/approvedfinaltmdls/pages/tmdl\\_transquaking.aspx](https://mde.maryland.gov/programs/water/tmdl/approvedfinaltmdls/pages/tmdl_transquaking.aspx) (last accessed Apr. 12, 2021).

<sup>11</sup> Maryland Department of the Environment, *Watershed Report for Biological Impairment of the Transquaking River Watershed in Dorchester County, Maryland Biological Stressor Identification Analysis Results and Interpretation*, iv (2012), [https://mde.maryland.gov/programs/Water/TMDL/DocLib\\_Transquaking\\_02130308/Transquaking\\_River\\_BSID\\_Report\\_012512\\_final.pdf](https://mde.maryland.gov/programs/Water/TMDL/DocLib_Transquaking_02130308/Transquaking_River_BSID_Report_012512_final.pdf).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at iii.

<sup>14</sup> See also Maryland Department of the Environment, *Total Maximum Daily Loads of Nitrogen and Phosphorus for the Transquaking River Dorchester, Maryland*, iv (2000), [https://mde.maryland.gov/programs/Water/TMDL/DocLib\\_Transquaking\\_02130308/transquaking\\_tmdl.PDF](https://mde.maryland.gov/programs/Water/TMDL/DocLib_Transquaking_02130308/transquaking_tmdl.PDF).

<sup>15</sup> See Environmental Protection Agency, *Decision Rational: Total Maximum Daily Loads of Nitrogen and Phosphorus for the Transquaking River Dorchester, Maryland*, 9 (2000), [https://mde.maryland.gov/programs/Water/TMDL/DocLib\\_Transquaking\\_02130308/TransquakingRiver\\_N\\_DR.pdf](https://mde.maryland.gov/programs/Water/TMDL/DocLib_Transquaking_02130308/TransquakingRiver_N_DR.pdf)

the designated use of aquatic life and wildlife; it has had this designation since 2012 and is still awaiting a TMDL.<sup>16</sup>

The Transquaking River drains to Fishing Bay and is tidally adjacent to the Nanticoke River, which is located in both Dorchester and Wicomico Counties on Maryland's Eastern Shore and enters the Chesapeake Bay. The Chesapeake Bay segment of the Nanticoke River is categorized as Use II, which is protected for water contact recreation, fishing, aquatic life, and wildlife. These waterways, which are impaired, in part for/by nutrients and fecal coliform, are included under the Nanticoke River Mainstem TMDL.<sup>17</sup> The Facility discharges to the Transquaking River and is located upstream of the Blackwater National Wildlife Refuge, which contains one-third of Maryland's tidal wetlands, provides protection from storms to lower Dorchester County, and is a haven for plant and animal biodiversity.<sup>18</sup>

As long as the Facility continues its effluent limit exceedances, unauthorized discharges to groundwater, failures to report, and continues to fail to comply with the terms and conditions of its NPDES Permit, it will further degrade already sensitive surface waters and groundwaters of the Transquaking River watershed, in continuing violation of the CWA, state law, and RCRA as described in this letter.

## **II. VIOLATIONS OF THE CLEAN WATER ACT**

### **A. Failure to Comply with the Permit's Effluent Limits for Biochemical Oxygen Demand ("BOD"), Ammonia (as N), Fecal Coliform, Total Nitrogen, and Total Phosphorus.**

The Facility operates pursuant to a discharge permit issued by the Maryland Department of the Environment. NPDES Permit MD0003247 (State No. 99-DP-0024) ("Permit") was renewed and became effective March 1, 2001. It expired on February 28, 2006 and has been administratively continued since that date. The Permit imposes monthly and daily limits on Fecal Coliform, Biochemical Oxygen Demand ("BOD"), Total Nitrogen (between April 1 and November 30), Ammonia (as N), and Total Phosphorus.<sup>19</sup> The Facility has continuously and significantly violated these pollution limits. These violations resulted in an excessive amount of nitrogen pollution to the River; Discharge Monitoring Reports ("DMRs") show that in 2020 the

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<sup>16</sup> See Maryland Department of the Environment, *Maryland's 2018 Final Integrated Report - Category 5 Waters*, 4 (2019), [https://mde.maryland.gov/programs/Water/TMDL/Integrated303dReports/Documents/Integrated\\_Report\\_Section\\_PDFs/IR\\_2018/2018IR\\_Part\\_F.7\\_Final.pdf](https://mde.maryland.gov/programs/Water/TMDL/Integrated303dReports/Documents/Integrated_Report_Section_PDFs/IR_2018/2018IR_Part_F.7_Final.pdf).

<sup>17</sup> See Maryland Department of the Environment, *Total Maximum Daily Loads of Fecal Coliform for the Restricted Shellfish Harvesting in the Nanticoke River Mainstream in Dorchester and Wicomico Counties, Maryland* (2008), [https://mde.maryland.gov/programs/Water/TMDL/DocLib\\_Nanticoke\\_02130305/TMDL\\_Nanticoke\\_River\\_061108\\_final.pdf](https://mde.maryland.gov/programs/Water/TMDL/DocLib_Nanticoke_02130305/TMDL_Nanticoke_River_061108_final.pdf).

<sup>18</sup> U.S. Fish and Wildlife Service, *Blackwater National Wildlife Refuge: About the Refuge*, <https://www.fws.gov/refuge/Blackwater/about.html> (last accessed Apr. 12, 2021).

<sup>19</sup> Valley Proteins - Linkwood Facility NPDES Permit, at 2-3.



Facility released 20,271 pounds of nitrogen to the Transquaking River.<sup>20</sup> The WLA allocated for nitrogen in the Transquaking Nutrient TMDL is 14,954 lbs/year<sup>21</sup>, and the Facility's annual load in 2020 (20,271 lbs) exceeded the WLA by more than 5,000 lbs of nitrogen. Additionally, these calculations for nitrogen are based on only eight months of data for 2020 because the Permit does not require reporting of Total Nitrogen discharges between December and March, and the Permit does not account for unpermitted discharges to the River via groundwater.<sup>22</sup> Therefore the annual loads are likely higher than the number above. This means that Valley Proteins is not complying with the Transquaking TMDL and is causing and contributing to further impairment and degradation of the Transquaking river.

Table 1 below summarizes effluent limit violations reported on the Environmental Protection Agency ("EPA") Enforcement and Compliance History Online ("ECHO") database which shows that the Facility has violated the Permit's limits at least 24 times from July 2018 - November 2020.<sup>23</sup>

Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A), entitles citizens to bring suit against "any person...alleged to be in violation" of an "effluent standard or limitation" established under the CWA. Moreover, it is unlawful to discharge pollutants to waters of the United States, such as the Transquaking River, without or in violation of the terms and conditions of a NPDES permit. 33 U.S.C. § 1311(a). Each day the discharged effluent exceeds permitted limits is a separate violation for which a penalty of up to \$56,460 can be assessed.<sup>24</sup> This suit, when filed, will also address any violations that were reported for the months subsequent to the most recent month in the below list.

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<sup>20</sup> See EPA, ECHO Pollutant Loading Report (DMR), Permit MD0003247 [https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading/?year=2021&permit\\_id=MD0003247](https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading/?year=2021&permit_id=MD0003247) ("Select Reporting Year" 2020 > select Report F: "View NPDES Monitoring Data Download" (this will download a spreadsheet of DMR data for the selected year, including Flow (MO AVG) and discharge concentrations)). The annual loading was calculated using the daily max concentrations reported for April - November 2020 using the following formula: Flow (monthly average) \* Reported Discharge Concentration \* 8.34 (conversion factor: 1 gallon = 8.34 lbs of water) \* Days per month = Monthly Load. The monthly loads for April - November of 2020 were then summed to the total measured load for 2020. See also Design Guidelines for Wastewater Facilities: Maryland Department of the Environment Engineering and Capital Projects Program at 6 (2016), available at <https://mde.maryland.gov/programs/Permits/WaterManagementPermits/Documents/WastewaterDesignGuidelines-2016.pdf>.

<sup>21</sup> See *supra* note 15.

<sup>22</sup> Valley Proteins - Linkwood Facility NPDES Permit, at 2-3.

<sup>23</sup> EPA, ECHO Effluent Limit Exceedances Report NPDES, Permit MD0003247 [https://echo.epa.gov/trends/loading-tool/reports/effluent-exceedances?permit\\_id=MD0003247](https://echo.epa.gov/trends/loading-tool/reports/effluent-exceedances?permit_id=MD0003247) ("Adjust Date Range" to Jul. 2018 - Apr. 2021 > "Apply Changes").

<sup>24</sup> 33 U.S.C. § 1319(d); see also 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation). Penalties that occurred on or "after November 15, 2015" and enforced "on or after December 23, 2020" are eligible for a maximum penalty of \$56,460 per day per violation. See *id.* This results in a maximum penalty of \$1,355,040 (24 violations x \$56,460).



**Table 1. Effluent Limit Violations of NPDES Permit MD0003247 (July 2018-Nov 2020)**

<b>Parameter</b>	<b>Limit Type</b>	<b>Monitoring Period</b>	<b>Limit</b>		<b>Reported Conc.</b>		<b>% Exceedance</b>
Fecal Coliform	Geo Mean	Jul-18	<=200	MPN/100mL	1,199	MPN/100mL	500%
Fecal Coliform	Geo Mean	Sept-18	<=200	MPN/100mL	294	MPN/100mL	47%
BOD, 5-day, 20 deg. C	DAILY MX	Nov-18	39	lb/d	40.3	lb/d	3%
Phosphorus, total [as P]	DAILY MX	Jan-19	8.2	lb/d	13.2	lb/d	61%
Phosphorus, total [as P]	MO AVG	Jan-19	4.1	lb/d	4.5	lb/d	10%
BOD, 5-day, 20 deg. C	MO AVG	Apr-19	31	lb/d	37.7	lb/d	22%
BOD, 5-day, 20 deg. C	DAILY MX	Apr-19	39	lb/d	136.1	lb/d	249%
BOD, 5-day, 20 deg. C	DAILY MX	Aug-19	39	lb/d	73.1	lb/d	87%
Phosphorus, total [as P]	DAILY MX	Feb-20	8.2	lb/d	17	lb/d	107%
Phosphorus, total [as P]	MO AVG	Feb-20	4.1	lb/d	4.9	lb/d	20%
Nitrogen, total [as N]	DAILY MX	May-20	82	lb/d	167	lb/d	104%
Nitrogen, total [as N]	MO AVG	May-20	41	lb/d	64	lb/d	56%
Nitrogen, ammonia total [as N]	DAILY MX	May-20	23	mg/L	60.4	mg/L	163%
Nitrogen, ammonia total [as N]	MO AVG	May-20	5.5	mg/L	21.5	mg/L	291%
BOD, 5-day, 20 deg. C	MO AVG	Jul-20	31	lb/d	86.1	lb/d	178%
BOD, 5-day, 20 deg. C	DAILY MX	Jul-20	39	lb/d	106.5	lb/d	173%
Nitrogen, total [as N]	MO AVG	Jul-20	41	lb/d	113.5	lb/d	177%
Nitrogen, total [as N]	DAILY MX	Jul-20	82	lb/d	142.8	lb/d	74%
Nitrogen, ammonia total [as N]	DAILY MX	Jul-20	23	mg/L	158	mg/L	587%
Nitrogen, ammonia total [as N]	MO AVG	Jul-20	5.5	mg/L	144	mg/L	2518%
BOD, 5-day, 20 deg. C	DAILY MX	Aug-20	39	lb/d	56.4	lb/d	45%
BOD, 5-day, 20 deg. C	DAILY MX	Nov-20	39	lb/d	81.3	lb/d	108%
Nitrogen, ammonia total [as N]	DAILY MX	Nov-20	23	mg/L	39.8	mg/L	73%
Nitrogen, ammonia total [as N]	MO AVG	Nov-20	5.5	mg/L	13	mg/L	136%

**B. Violations of Permit Conditions for Failure to Satisfy Discharge Monitoring Report (“DMRs”) Requirements and Failure to Satisfy Removed Substances Reporting Requirements.**

**a. Failure to Submit Complete DMRs**

Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A), entitles citizens to bring suit against “any person...alleged to be in violation” of an “effluent standard or limitation” established under the CWA. Section 505(f) defines “effluent standard or limitation” broadly to include “a permit or condition of a permit issued under Section 402 that is in effect under the [CWA].” The Permit was issued under Section 402 and is both a State of Maryland discharge permit and a federal NPDES Permit pursuant to Section 402. Therefore, violations of conditions of this NPDES permit are violations of federal law and eligible for CWA citizen suit enforcement. As stated above, the Permit contains numerous special conditions, including Special Condition N which requires the maintenance and operation of seven on-site monitoring wells.<sup>25</sup> Special Condition N states that “[o]nce per quarter, the permittee shall sample for nitrate (as N), fecal coliform, and total dissolved solids” and that the “results from these tests and the water level measurement shall be reported to the Department as per General Condition A.2.”<sup>26</sup> General Condition A.2 identifies the Facility’s monitoring and reporting requirements stating that “[m]onitoring results obtained during the calendar quarter shall be summarized on a [DMR] form” and sent to MDE “no later than the 28th day of the month following the end of the reporting period.”<sup>27</sup>

To the best of Claimants’ knowledge and belief based on a review of the information on EPA’s ECHO database for this Facility<sup>28</sup> as well as public records obtained from MDE via a Public Information Act request, over the last five years, Valley Proteins has failed to timely report monitoring well sampling data at least 109 times.<sup>29</sup> To date, this missing data has not been submitted to MDE by the Facility.<sup>30</sup>

To the best of Claimants’ knowledge and belief, the Facility has not remedied these non-reporting violations and this failure is an ongoing and continuous violation of the Permit.

It is unlawful to discharge pollutants to waters of the United States, such as the Transquaking River, without a NPDES Permit or in violation of the terms and conditions of a NPDES permit. 33

<sup>25</sup> Valley Proteins - Linkwood Facility NPDES Permit, at 7, Special Condition N.

<sup>26</sup> *Id.* at 7, Special Condition N.4.

<sup>27</sup> *Id.* at 17, General Condition A.2.

<sup>28</sup> EPA, ECHO Pollutant Loading Report (DMR), NPDES Permit MD0003247, [https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading?year=2021&permit\\_id=MD0003247](https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading?year=2021&permit_id=MD0003247) (“Select Reporting Year” > select Report F: “View NPDES Monitoring Data Download”).

<sup>29</sup> This is a total of four (4) monitoring parameters (nitrate (as N), fecal coliform, total dissolved solids, and water level measurement) at seven (7) wells for each quarter, totaling 109 individual measurements that were not reported as required by the Permit (7 wells \* 4 parameters = 28 violations; 28 violations \* 4 quarters (Q4 2016, Q2-Q4 2018), subtract 3 violations for data reported for MW1 for Q2 2018 = 109). *See id.*

<sup>30</sup> The data is missing from the period of October 2016 to December 2018.

U.S.C. § 1311(a). The Facility is discharging pollution in violation of Special Condition N of the permit by failing to report monitoring well sampling data. Additionally, each instance of failure to report plus each day that the failure to report was not corrected constitutes a violation of the Permit and is subject to a civil penalty not to exceed \$56,460 for each violation and each day the violation continues.<sup>31</sup>

**b. Failure to Satisfy Removed Substances Reporting Requirements**

Valley Proteins removes waste material in the form of sludge from the facility and ships the material to farms to be applied to fields as fertilizer. Wastewater from the Facility's operations is sent to two onsite lagoons where material settles to the bottom. From time to time, this material, sludge, is removed from the lagoons and disposed of by a third-party sludge disposal service, Denali Water Systems ("Denali"). PIA documents detail that Denali then either sells the sludge to farmers for application on their fields as fertilizer, stores the sludge offsite at receiving farms, or sends the sludge to a wastewater treatment facility.

Valley Proteins' Permit requires detailed reporting on substances removed from the Facility, in order to ensure that waste is "disposed of in a manner to prevent any removed substances or runoff from such substances from entering or from being placed in a location where they may enter the waters of the State."<sup>32</sup> As detailed in three subsections below, the Facility has continuously failed to comply with Special Permit Conditions D, I, and K. These failures constitute enforceable violations of the CWA and the Facility's NPDES Permit under 33 U.S.C. § 1365(a)(1)(A), and it is unlawful for the Facility to discharge pollution in violation of Special Conditions D, I and K, of the Permit.<sup>33</sup>

*i. Special Condition D. Removed Substances*

Valley Proteins is required to report to the Department, when requested, information on the disposal of removed substances from the facility.<sup>34</sup> Removed substances subject to this reporting requirement are "[w]astes such as solids, sludges, or other pollutants removed from or resulting from treatment or control of wastewaters, or facility operations."<sup>35</sup> The Permit requires Valley Proteins to provide "[a] suitable map showing all areas used for disposal of removed substances" and "[t]he physical, chemical, and biological characteristics, as appropriate; quantities of any removed substances; and the method of disposal."<sup>36</sup> These reporting requirements pass on to any contractor or subcontractor hired to dispose of the removed substances from the Facility.<sup>37</sup> Denali

<sup>31</sup> 224 violations x \$56,469 = \$12,649,056 maximum penalty.

<sup>32</sup> Valley Proteins - Linkwood Facility NPDES Permit, at 20, General Condition B.7.

<sup>33</sup> 33 U.S.C. § 1365 (f) (effluent limitations include permit conditions); 33 U.S.C. § 1311(a).

<sup>34</sup> Valley Proteins - Linkwood Facility NPDES Permit, at 5, Special Condition D.

<sup>35</sup> *Id.* at 20, General Condition B.7.

<sup>36</sup> *Id.* at 5, Special Condition D.1.a and b.

<sup>37</sup> *Id.*, Special Condition D.1.c.

Water Solutions is the contractor hired by Valley Proteins to handle disposal of removed substances, namely sludge, from the Facility. In the Removed Substances Reporting Forms, when required by the Department to be submitted, Valley Proteins failed to report the physical, chemical, and biological characteristics of the sludge. Valley Proteins also states in the Removed Substances Reporting Forms that the sludge removed and disposed of by Denali is land applied for treatment. However, records from the Department indicate that not all the sludge is disposed of via land application, but some unknown quantity is either stored onsite at the receiving farms or sent to another wastewater treatment plant for removal. It is also unclear how much sludge is stored, either on or off site, in what manner or method, and for how long. Valley Proteins is obligated to report how the waste sludge removed from the Facility is disposed of in a manner that “prevent[s] any removed substances or runoff from such substances from entering or from being placed in a location where they may enter the waters of the State.”<sup>38</sup> Presently, Valley Proteins has not met these Permit requirements by failing to report the quantities of sludge that are land applied, stored at other facilities, or sent to another wastewater treatment plant. Valley Proteins cannot pass over its waste to Denali Water Solutions, and fail to account for how the waste is then treated in its required reporting under the Permit. By hiring a contractor to dispose of the waste from the facility, Valley Proteins still is obligated to ensure the contractor, Denali Water Solutions, obtains, documents, and provides the level of detail necessary to meet the reporting requirements of the Permit.<sup>39</sup>

ii. *Special Condition I. Sludge Management Plan*

Special Condition I requires the Facility to report annually to the Department the “quantity of sludge expected to be generated and how *all sludge generated at the facility shall be disposed of*. The Report shall include the quantities to be land applied under a nutrient management plan and the quantities to be disposed of by other methods.”<sup>40</sup> Valley Proteins has failed to comply with the terms of Special Condition I in its annual reporting. In the last three reports submitted to the Department in January of 2018, 2019, and 2020, Valley Proteins only reports the total wet tons of sludge removed from the Facility for the year prior. The reports do not contain any information regarding how the sludge is disposed of, what quantities are land applied, or disposed of by other methods. Valley Proteins hired Denali Water Solutions to remove waste solids from the Facility and dispose of the sludge. Denali Water Solutions land applies sludge to farms in the region. PIA records show that if the receiving farms do not have adequate storage facilities, the sludge is discharged at another wastewater treatment plant for processing. Valley Proteins is obligated under Special Condition I to report to the Department the quantity of sludge land applied for treatment and the quantity of sludge disposed of by other measures, including treatment at another wastewater treatment plant. Valley Proteins has failed to report this information to the Department

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<sup>38</sup> *Id.* at 20, General Condition B.7.

<sup>39</sup> *Id.* a 5, Special Condition D.1.c. (“If disposal is handled by persons other than the permittee, identification of the contractor or subcontractor, their mailing address, and the information specified in a and b above.”)

<sup>40</sup> *Id.* at 6, Special Condition I.1 (emphasis added).

in the last three Special Condition I reports, or in the Removed Substances Reporting Forms required under Special Condition D.

Special Condition I also requires Valley Proteins to dispose of sludge under a Nutrient Management Plan, and to “update and implement the current nutrient management plan upon approval by the Department in accordance with changes in COMAR 15.20.08.”<sup>41</sup> The Facility “operates under a nutrient management plan approved by the Department [and is required] to update and implement the plan” to comply with updated regulations.<sup>42</sup> Upon reviewing documents provided by the Department, the Claimants have yet to locate the Nutrient Management Plan as required by Special Condition I, or any updated Nutrient Management Plans approved by the Department since the permit was issued in 2001. Updating Nutrient Management Plans is particularly important to comply with regulatory changes, especially the Phosphorus Management Tool, which was developed to manage risks to water quality associated with the excessive amounts of legacy phosphorus in Maryland soils.<sup>43</sup> The sludge from Valley Proteins contains phosphorus and the Nutrient Management Plan must appropriately manage it according to the phosphorus management requirements in Maryland’s nutrient management plan regulations.<sup>44</sup>

Valley Proteins has failed to comply with this reporting condition of the Permit. Without detailed reporting as required under Special Condition D and Special Condition I, Valley Proteins cannot prove that its waste is “disposed of in a manner to prevent any removed substances or runoff from such substances from entering or from being placed in a location where they may enter the waters of the State.”<sup>45</sup>

*iii. Special Condition K. Prohibition on Application of Wastewater to Ground*

Special Condition K prohibits the Facility from spray irrigation “or any other method of wastewater disposal to the ground that may result in the discharge of wastewater into the ground waters of the State.”<sup>46</sup> Valley Proteins has failed to comply with this condition by failing to prevent wastewater disposal that may discharge to groundwater. Records indicate that spray irrigation has not occurred on the property for over 20 years, yet elevated nitrate levels in onsite monitoring wells indicate a pathway of discharge to the groundwater via spills, leaks, leaching, or other means from onsite lagoons or other sources during and after the treatment process. A MDE inspection report from March 8, 2018, indicates that “some of the storm water flow and raw product drainage is exposed to ground water[;]” that a “barrier wall is not sealed properly and is allowing raw product drainage to be exposed to the surrounding ground area[;]” and that “some raw product placed over the barrier wall onto the ground area.”<sup>47</sup> The inspector noted that the Site must take

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<sup>41</sup> *Id.*, Special Condition I.2.

<sup>42</sup> *See supra* note 7, Fact Sheet at 4.

<sup>43</sup> *See* Md. Code Regs. 15.20.08.09 (2021).

<sup>44</sup> *Id.*

<sup>45</sup> Valley Proteins - Linkwood Facility NPDES Permit, at 20, General Condition B.7.

<sup>46</sup> *Id.* at 6, Special Condition K.

<sup>47</sup> MDE Inspection Report, at 7 (Mar. 8, 2018).

corrective action to prevent the discharge to groundwater.<sup>48</sup> A follow up inspection on May 10, 2018, notes that the “barrier wall is not sealed and continues to allow raw product drainage to come in contact with the surrounding ground area.”<sup>49</sup> A further inspection on August 8, 2018, indicated that the “existing barrier wall is not sealed and will allow raw product drainage to come into contact with the surrounding ground.”<sup>50</sup> To the best of Claimants' knowledge and belief this source of groundwater contamination has not been fully remediated.

Additionally, in a letter sent to the Chesapeake Bay Foundation on April 8, 2019, MDE indicates that treatment lagoons at the Facility are likely unlined and the cause of high nitrate levels in some of the groundwater monitoring wells.<sup>51</sup> Internal MDE emails from March 2019 indicate that at least one of the lagoons at the Site is unlined and that sludge is stored in the lagoon until it can be land applied. MDE's 2000 Summary Report and Fact Sheet indicates that “since the spray fields have not been used for years, the lagoons may be causing the problem [groundwater monitoring reports indicating high levels of nitrates that exceed groundwater criteria]” and that MDE was “concern[ed] about the high groundwater nitrates because of the proximity of unlined lagoons carrying high nitrate wastewater.”<sup>52</sup> The Permit requires the Facility to plan and investigate the cause of the high nitrates in groundwater at the Facility.<sup>53</sup> As detailed below, that plan and investigation never commenced and the nitrate levels have remained elevated over the last 10 years. This evidence points to the Facility's illegal discharge of wastewater to groundwater in violation of this permit condition.

Valley Proteins has violated this Permit condition by repeated and continuous wastewater discharges to groundwater from the Site's lagoons and/or through other means at the Facility as identified above.

*iv. General Permit Condition B.7. Removed Substances*

As discussed in the facts for claims B.b.i-iii above, the wastes stored at the Facility and eventually taken off site for disposal are not handled in a manner that “prevent[s] any removed substances or runoff from such substances from entering or from being placed in a location where they may enter the waters of the state.”<sup>54</sup> The facts indicate that there is a pathway of groundwater contamination at the Facility from the onsite lagoons, or through other methods or sources. The Facility has failed to adequately analyze the source of this contamination and provide MDE with a report, plan, and schedule to address the contamination. The Facility has violated this condition

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<sup>48</sup> *Id.*

<sup>49</sup> MDE Inspection Report, at 1 (May 10, 2018).

<sup>50</sup> MDE Inspection Report, at 2 (Aug. 8, 2018).

<sup>51</sup> Letter from Ed Stone, Maryland Department of the Environment, to Alan Girard, Chesapeake Bay Foundation, 10-11 (Apr. 8, 2019) (on file with Chesapeake Bay Foundation).

<sup>52</sup> Fact Sheet, at 5.

<sup>53</sup> Valley Proteins - Linkwood Facility NPDES Permit, at 7, Special Condition N.

<sup>54</sup> *Id.* at 20, General Condition B.7.



as it has not prevented wastes produced and stored onsite or runoff from such wastes from entering or being placed in a location where they may enter the waters of the State.

### **C. Violation of Other Permit Conditions**

As stated above, Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A), entitles citizens to bring suit against “any person...alleged to be in violation” of an “effluent standard or limitation” established under the CWA. This includes conditions of NPDES permits. Based on a review of MDE PIA files obtained for this Facility and as detailed below and to the best of Claimants’ knowledge and belief, the Facility has failed to comply with the following Special Conditions since the Permit was approved and became effective on March 1, 2001. The Facility has been in violation of each one of these Special Conditions every day for the last five (5) years, March 2016 - March 2021, totaling 1,825<sup>55</sup> days of violation for each condition violated. There are five (5) conditions not complied with, resulting in a total of 9,125 individual days and violations of Permit conditions.<sup>56</sup> Each one of these violations is subject to a civil penalty not to exceed \$56,460 for each violation.<sup>57</sup>

#### **a. Special Condition L. Compliance Plan for Nitrogen**

Valley Proteins has failed to comply with the Special Condition L as it has not submitted to the Department a “compliance plan for meeting the nitrogen limits in Special Conditions A and L.”<sup>58</sup> The PIA files did not include information pertaining to this plan or a schedule for its implementation.

#### **b. Special Condition M. Compliance Plan for Groundwater Nitrates**

Valley Proteins is required to develop “a plan and schedule for investigating the cause of high nitrates in the groundwater at the facility.”<sup>59</sup> A 2018 Inspection Report notes that Valley Proteins sent MDE a letter on February 23, 2003 “outlining its groundwater remediation plan” and stating that “[r]eview of the plan shows that it will allow the nitrate levels in the ground water to degrade naturally.”<sup>60</sup> Disclosed records did not include a plan and schedule for this required investigation. This stated strategy is not a “plan and schedule for investigating the cause of high nitrates in the groundwater at the facility.”<sup>61</sup> Furthermore, it has been eighteen years since Valley Proteins’ natural attenuation strategy was “outlined” and reported data shows continued elevated levels of nitrates in the groundwater. A review of groundwater monitoring well reports details persistent

<sup>55</sup> 365 days x 5 years = 1,825 days.

<sup>56</sup> 1,825 days x 5 Permit Conditions violated = 9,125 individual daily violations of Permit Conditions.

<sup>57</sup> This results in a maximum penalty for these Conditions alone of \$515,197,500 (9,125 violations x \$56,460). *See supra* note 24.

<sup>58</sup> Valley Proteins - Linkwood Facility NPDES, at 7, Special Condition L.

<sup>59</sup> *Id.* at 7, Special Condition M.

<sup>60</sup> MDE Inspection Report, at 5 (Mar. 8, 2018).

<sup>61</sup> Valley Proteins - Linkwood Facility NPDES Permit, at 7, Special Condition M.



and excessive nitrate levels in numerous monitoring wells where levels exceeded the 10 mg/L Maximum Contaminant Level (“MCL”) set by the U.S. EPA for drinking water a total of 115 times from January 2005 - December 2015. More recently, monitoring well data reported on EPA’s ECHO database and PIA records indicate that high levels of nitrates in the groundwater have continued to be present for at least the last five years, with twenty (20) sampling results from March 2016 - December 2020 indicating nitrate levels above the MCL.<sup>62</sup> This does not include the four quarters for which monitoring data was not in the files disclosed via PIA request or on ECHO.<sup>63</sup> These facts demonstrate that Valley Proteins has not complied with this Permit Condition as it has not developed a “plan and schedule for investigating the cause” of the nitrates that have continued to exist in elevated levels at onsite groundwater monitoring wells.

### **c. Special Condition P. Biomonitoring Program**

Valley Proteins has failed to comply with Special Condition P as it has not submitted to the Department for approval “a study plan to evaluate wastewater toxicity at Outfall 001 by using biomonitoring.”<sup>64</sup> The PIA records requested included all permits and related documents, which should have included the Site’s biomonitoring study plan. These documents were not included in the produced records and as such, based on Claimants’ information and belief, the Facility has failed to comply with this Permit condition.

### **d. General Condition B.3. Facilities Operation**

The claims above and below demonstrate that the Facility is not in good working order or operating efficiently as demonstrated by the repeated effluent limit exceedances, failure to comply with a number of additional Permit conditions, and failure to prevent unpermitted discharges to groundwater. A review of inspection reports from 2015-2019 indicates repeated instances of the Facility failing to operate its treatment, control, and monitoring systems efficiently and in good working order. A September 2017 inspection report notes an overflow event on August 27, 2017. This event was caused by a loose aerator in the aeration tank causing sludge to spill over the tank wall. This was noted by the inspector to be a violation of the Site’s Permit. The March, May, and August 2018 inspection reports note exposure of raw product to groundwater caused by a failure to properly maintain structures to control that product.<sup>65</sup> Additionally, during an inspection on November 5, 2019, MDE noted another overflow when the “mechanical aerator floated over to the side of the tank and began to splash the contents over the sidewalk and onto the ground.”<sup>66</sup> This overflow was estimated to be about 2,000 gallons.<sup>67</sup> These reports and the facts contained therein

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<sup>62</sup> EPA, ECHO Pollutant Loading Report (DMR), NPDES Permit MD0003247, [https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading?year=2021&permit\\_id=MD0003247](https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading?year=2021&permit_id=MD0003247) (“Select Reporting Year” > select Report F: “View NPDES Monitoring Data Download”); Quarterly Groundwater Monitoring Reports.

<sup>63</sup> See *supra* Claim I.B.a.

<sup>64</sup> Valley Proteins - Linkwood Facility NPDES Permit, at 7, Special Condition P.

<sup>65</sup> *Supra* notes 47, 48, 49, 50.

<sup>66</sup> MDE Inspection Report, at 1 (Nov. 5, 2019).

<sup>67</sup> *Id.* at 2.

indicate that the Facility is failing to operate its treatment, control, and monitoring facilities efficiently and in good working order in violation of General Condition B.3.<sup>68</sup>

**e. General Condition B.4. Adverse Impact**

The claims above and below demonstrate that the Facility has not taken “all reasonable steps to minimize or prevent any adverse impact to waters of the State or to human health resulting from noncompliance with any effluent limitations specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.”<sup>69</sup> This is evidenced by the repeated effluent limit exceedances, the groundwater contamination, and repeated reporting and monitoring failures. The Facility has therefore not taken all reasonable steps to minimize or prevent adverse impact to waters of the State or to human health.<sup>70</sup>

**D. Unauthorized/Unpermitted Discharge to Transquaking River Via Shallow Groundwater.**

As described above, it is unlawful to discharge pollutants to waters of the United States, such as the Transquaking River, without or in violation of the terms and conditions of a NPDES permit. 33 U.S.C. § 1311(a). The Site contains several industrial waste ponds that include two sludge storage lagoons in the northeast corner of the Site, and two storage ponds in the northwest corner of the Site. At least one of the sludge storage lagoons is aerated.<sup>71</sup> The industrial waste ponds (or “sludge lagoons”) are located proximately to the Transquaking River, which runs east to west along the southern side of the Site and curves toward the northwest on the western side of the Site. The sludge lagoons are located approximately 350-400 feet from the edge of the River.<sup>72</sup> As discussed above, these sludge lagoons contain industrial waste with concentrated nutrient levels, including nitrates. The soil around and between the sludge lagoons and the River is a sandy loam and sand mix, well-drained with high transmissivity.<sup>73</sup>

The Site maintains groundwater monitoring wells (“MW”). MW2 & 3 are located on the south side of the Site; MW4, 4A, 8, 5 & 6 are located on the west side of the Site (from south to north); and MW1 & 7 are located on the east side of the Site. MW3 is less than 100 feet, and MW2, 4, 4A & 5 are less than 50 feet from the Transquaking River. After a decline from 2010 to 2017, nitrate levels recorded at MW5 increased to over 22 mg/L in 2019, and recently dropped again to 12 mg/L

<sup>68</sup> Valley Proteins - Linkwood Facility NPDES Permit, at 19, General Condition B.3.

<sup>69</sup> Valley Proteins - Linkwood Facility NPDES Permit, at 19, General Condition B.4.

<sup>70</sup> See *supra*, Claims II.A, II.B.a-b, II.C.a-e, II.D, III, and IV.

<sup>71</sup> See Fact Sheet, at 2.

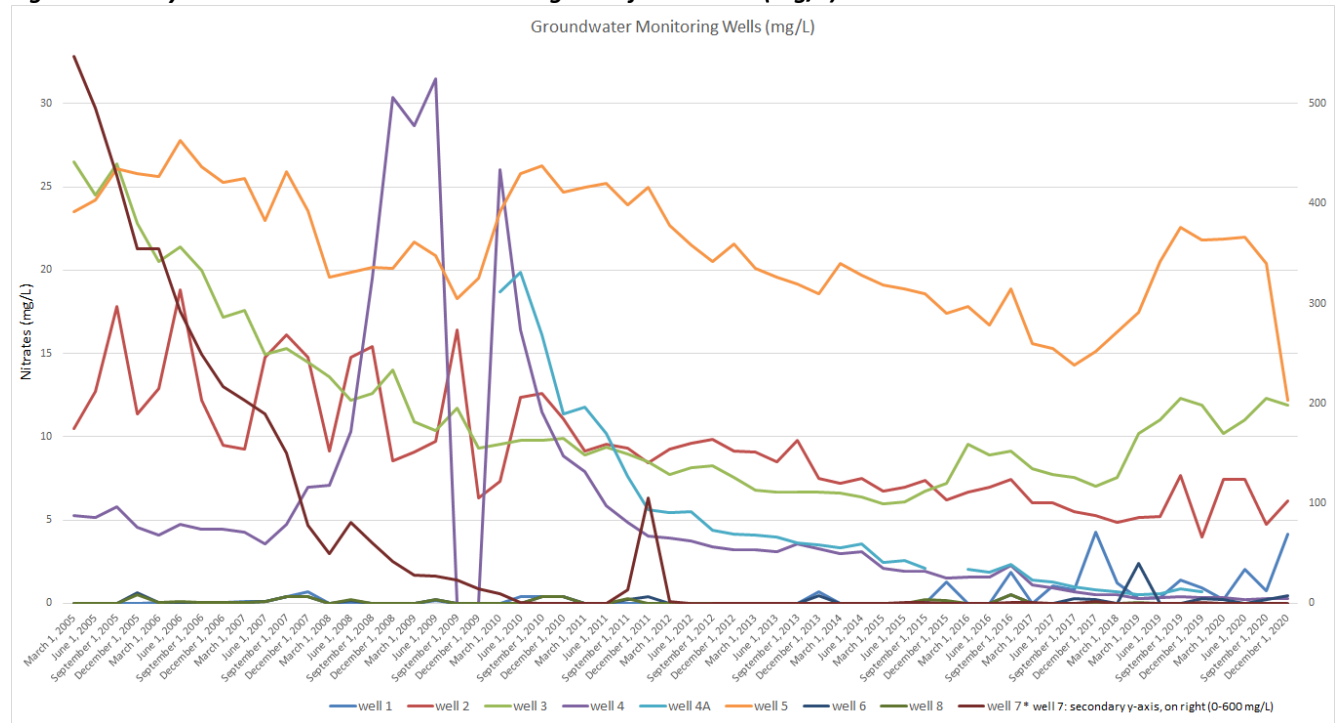
<sup>72</sup> See Maryland's Environmental Resources and Land Information Network, <https://dnr.maryland.gov/Pages/Merlin.aspx>. (Using the measurement function at the bottom left-hand corner of the Map and measuring from the edge of the sludge lagoons to the approximate bank of the Transquaking River).

<sup>73</sup> See USDA Natural Resources Conservation Service, Web Soil Survey, <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> (insert facility address on the left-hand side of the website).

in December 2020. Similar increases were observed at MW3, which increased to 12 mg/L in 2019 and 2020. MW2 remains above 5 mg/L. The maximum contaminant level (“MCL”), established by EPA to protect drinking water, is 10 mg/L for nitrates.<sup>74</sup>

Based on information and belief, and as described above, industrial waste from the Site’s sludge lagoons is discharging to the Transquaking River, via shallow groundwater, in violation of the Facility’s Permit. The sandy soil substrate provides a highly transmissible conduit for untreated industrial sludge pollutants to travel a short distance, with little to no attenuation before reaching the River.

**Figure 1. Valley Proteins Groundwater Monitoring Data for Nitrates (mg/L): 2005-2020**



### **III. VIOLATION OF THE RESOURCE CONSERVATION AND RECOVERY ACT**

The contamination of groundwater via the unlined sludge lagoons at the Valley Proteins Site also constitutes a violation of the Resource Conservation and Recovery Act. 42 U.S.C. § 6901 *et seq.* Valley Proteins holds process wastewater that contains sludge in unlined lagoons located on the Site. Based on information and belief, pollutants contained in the process wastewater and sludge leach from the lagoons into the underlying groundwater. That discharge is defined as a “disposal” of “sludge,” a “solid waste,” into an “open dump” as those terms are defined by the Solid Waste Disposal Act (SWDA, also known as the Resource Conservation and Recovery Act or “RCRA”). 42 U.S.C. § 6903(3), (14), (26A), and (27). RCRA requires the disposal of waste “to minimize the present and future threat to human health and the environment.” 42 U.S.C. § 6902(b).

<sup>74</sup> See 40 C.F.R. § 141.62(b)(7).

The Valley Proteins Linkwood Facility sits atop several groundwater aquifers; the closest to the surface of the land is known as the Surficial Aquifer. The aquifer is “[p]redominantly an unconfined, water-table aquifer throughout its extent” and varies in depth from “more than 70 ft above sea level in southern Cecil County to 199 ft below sea level near Salisbury.”<sup>75</sup> On information and belief, including monitoring well data, the Facility’s groundwater wells monitor water in that aquifer. One of the pollutants contained within the Facility’s wastewater and sludge is nitrogen, which has been identified in groundwater beneath the Site at levels which exceed the EPA-established, human health-based maximum contaminant level (MCL) for nitrates in drinking water of 10 mg/l.<sup>76</sup> There are wells located in the vicinity of the Facility which may be used as drinking water wells.<sup>77</sup> High levels of nitrate in drinking water can cause methemoglobinemia (Blue Baby Syndrome) in infants and young children.<sup>78</sup>

Further, based on information and belief, and as described in section II.D above, industrial waste from the Site’s unlined sludge lagoons is migrating offsite, via shallow groundwater, to the Transquaking River. High levels of nitrogen in surface waters lead to the growth of harmful algal blooms, which threaten both human and ecosystem health.<sup>79</sup> Thus, the disposal of sludge in the lagoons by Valley Proteins creates an imminent and substantial endangerment to health and the environment both in violation of RCRA and subject to suit by citizens. 42 U.S.C. § 6972(a)(1)(B).

#### IV. VIOLATION OF STATE LAW

State law prohibits the unauthorized discharge of pollutants to waters of the State. MD. CODE ANN., ENVIR. § 9-322. The definition of “Waters of this State” includes groundwater. MD. CODE ANN., ENVIR. § 9-101(l). The Facility has caused and is likely to cause discharges to waters of the State via the onsite sludge lagoons that are used in the treatment process and also used to store sludge before it is taken off site for disposal. As detailed above, in Parts II.B.b, II.D, and III, numerous documents and reports indicate a likely pathway of contamination or discharge from the lagoons or other sources to groundwater. The Facility’s current Permit does not authorize these

<sup>75</sup> Maryland Geological Survey, *Coastal Plain Aquifer Information: Surficial aquifer*, [http://www.mgs.md.gov/groundwater/coastal\\_plain\\_aquifers\\_mobile.html](http://www.mgs.md.gov/groundwater/coastal_plain_aquifers_mobile.html), (last accessed Apr. 12, 2021).

<sup>76</sup> See 40 C.F.R. § 141.62(b)(7).

<sup>77</sup> See Maryland Geological Survey, *Coastal Plain Aquifer Information: Surficial aquifer*, [http://www.mgs.md.gov/groundwater/coastal\\_plain\\_aquifers\\_mobile.html](http://www.mgs.md.gov/groundwater/coastal_plain_aquifers_mobile.html), (last accessed Apr. 12, 2021) (“The Surficial aquifer is a major source of water supply. The largest use is for seasonal irrigation (agriculture); however, some municipalities...as well as many domestic users, also utilize the Surficial aquifer.”).

<sup>78</sup> See, e.g., Deana M. Manassaram, et. al, *Nitrates in drinking water and methemoglobin levels in pregnancy: a longitudinal study*, 9 *Envtl. Health* 60 (2010), <https://link.springer.com/article/10.1186/1476-069X-9-60>; see also, EPA, *Drinking Water Requirements for States and Public Water System: Chemical Contaminant Rules*, <https://www.epa.gov/dwreginfo/chemical-contaminant-rules#rule-history> (last accessed Apr. 12, 2021) (“High levels of nitrate and nitrite are most serious for infants. The conversion of nitrate to nitrite by the body, can interfere with the oxygen-carrying capacity of the child’s blood, sometimes called Blue Baby Syndrome. This acute condition can occur rapidly over a period of days. Symptoms include shortness of breath and blueness of the skin.”).

<sup>79</sup> See, e.g., Patricia Gilbert, et. al, *Harmful algal blooms in the Chesapeake and Coastal Bays of Maryland, USA: Comparison of 1997, 1998, and 1999 events*, 24 *Estuaries* 875–883 (2001), <https://doi.org/10.2307/1353178>; U.S. Centers for Disease Control and Prevention, *Harmful Algal Bloom (HAB)-Associated Illness*, <https://www.cdc.gov/habs/illness.html> (last reviewed Dec. 13, 2017).

discharges and Claimants are unaware of any State groundwater discharge permit or other permit that would authorize these discharges. These discharges are not permitted and are therefore a violation of State law. Additionally, the Facility has failed to conduct any analysis or investigation into the source of the contamination or attempted to remediate it over the last five years. It is likely that these discharges have occurred consistently over the last five years in violation of State law.

## **V. PARTIES GIVING NOTICE**

ShoreRivers is a nonprofit organization dedicated to protecting and restoring waterways on Maryland's Eastern Shore through science-based advocacy, restoration, and education. The organization hosts volunteers for environmental restoration projects, water quality monitoring, educational sessions, and more. ShoreRivers has established dedicated Watershed Advisory Boards for each major subwatershed within the organization's territory. Each board is chartered specifically to oversee grassroots restoration and protection of their individual watershed. ShoreRivers runs educational programs on the Transquaking River. The ShoreRivers' office is located at 114 South Washington Street, Ste. 301, Easton, MD 21601, and the main number is (443) 385-0511.

Dorchester Citizens for Planned Growth (DCPG) is a nonprofit organization founded in 2004 for the purpose of providing a public voice on land and water uses in Dorchester County, Maryland. The organization seeks to guarantee a public voice in issues of land and water use, and advocates for the promotion, maintenance, and conservation of the natural resources, farmland, and waterways of the county. The Board of Directors is made up of volunteers who live in Dorchester County and represent a variety of backgrounds and professions. Their mailing address is P.O. Box 576, Cambridge, MD 21613.

Chesapeake Bay Foundation, Inc. (CBF), founded in 1967, is the only independent organization dedicated solely to protecting the Chesapeake Bay and its rivers and streams by improving water quality and reducing pollution. CBF is headquartered in Annapolis, Maryland, with field offices in Maryland, Pennsylvania, Virginia, and Washington, D.C. CBF's staff of approximately 180 work to "Save the Bay" through education programs, environmental restoration projects, advocacy at the state and federal levels, and the use of targeted litigation. CBF has over 300,000 members, volunteers, and electronic subscribers. CBF operates numerous programs that are designed to protect and restore the quality of the Bay and its tributaries and seeks to restore and maintain sustainable populations of crabs, fish, and oysters; thriving water-based and agricultural economies; and a clean and healthy ecosystem for our children and grandchildren. CBF's headquarters is located at 6 Herndon Avenue, Annapolis, Maryland, 21403, and the main phone number is (410) 268-8816.

## VI. CONCLUSION

Valley Proteins, Inc. has continually violated and will continue to violate the Clean Water Act, Resource Conservation and Recovery Act, and Maryland state law at the Valley Proteins Linkwood Facility located at 5420 Linkwood Road, Linkwood, MD 21835 unless the violations enumerated above are addressed. Accordingly, Claimants intend to file suit to enjoin and abate the aforementioned violations, ensure future compliance with the CWA, RCRA, and Maryland state law, obtain civil penalties, recover attorneys' fees and costs of litigation, and obtain other appropriate relief.

We would welcome an opportunity to discuss a resolution of this matter prior to the initiation of litigation if you are prepared to remedy the violations discussed above. If you have any questions regarding the allegations in this notice or believe any of the foregoing information may be in error, please contact us at the phone numbers or email addresses listed below.

Sincerely,

*Attorneys for Shore Rivers and  
Dorchester Citizens for Planned Growth*



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Philadelphia, PA 19103

D. Lee Currey  
Director  
Water and Science Administration  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, MD 21230

Edward Dexter  
Administrator  
Solid Waste Program  
Maryland Department of the Environment  
1800 Washington Boulevard, Suite 605  
Baltimore, MD 21230-1719



- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Chris Bledsoe, General Manager  
Valley Proteins, Inc. - Linkwood Facility  
5470 Linkwood Road  
Linkwood, MD 21835



9590 9402 3948 8060 1183 14

2. Article Number (Transfer from service label)

7020 0640 0000 2372 1741

COMPLETE THIS SECTION ON DELIVERY

A. Signature

*[Handwritten Signature]*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Chris Bledsoe

C. Date of Delivery

4/15/21

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☐ Certified Mail®

☒ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☒ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

1. Article Addressed to:

\_\_\_\_\_

2. Article Number (Transfer from service label)

7020 0640 0000 2372 1765

**A. Signature**

**x**

B. Received by (Printed Name)

☐ Agent☐ Addressee

C. Date of Delivery

- D. Is delivery address different from item 1?** ☐ Yes  
If YES, enter delivery address below: ☐ No

### 3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☒ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®  
☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☒ Return Receipt for Merchandise  
☐ Signature Confirmation™  
☐ Signature Confirmation Restricted Delivery



FAQs >

Track Another Package +

Tracking Number: 70200640000023721765

Remove X

Your item was delivered to an individual at the address at 11:22 am on April 15, 2021 in LINKWOOD, MD 21835.

Feedback

 **Delivered, Left with Individual**

April 15, 2021 at 11:22 am  
LINKWOOD, MD 21835

Get Updates ▾

Text & Email Updates	▾
Tracking History	▾
Product Information	▾

**SENDER: COMPLETE THIS SECTION**

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- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

CSC-Lawyers Incorporating  
Service, INC  
c/o Valley Proteins, INC.  
7-St. Paul Street, Suite 820  
Baltimore, MD 21202



9590 9402 3948 8060 1183 52

**2. Article Number (Transfer from service label)**

7020 0640 0000 2372 1734

**COMPLETE THIS SECTION ON DELIVERY**

**A. Signature**

**X**

*Mike Thomas*

☐ Agent

☐ Addressee

**B. Received by (Printed Name)**

**C. Date of Delivery**

**D. Is delivery address different from item 1? ☐ Yes**  
If YES, enter delivery address below: ☐ No

APR 16 2021

**3. Service Type**

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☒ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery



FAQs >

Track Another Package +

Tracking Number: 70200640000023721734

Remove X

Your item was delivered at 9:13 am on April 16, 2021 in BALTIMORE, MD 21202.

Feedback

 **Delivered**

April 16, 2021 at 9:13 am  
BALTIMORE, MD 21202

Get Updates ▾

Text & Email Updates	▾
Tracking History	▾
Product Information	▾

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael Regan  
 Administrator, U.S. EPA  
 Office of the Administrator, 1101A  
 1200 Pennsylvania Avenue, NW  
 Washington, D.C. 20460



9590 9402 3948 8060 1183 21

2. Article Number (Transfer from service label)

7020 0640 0000 2372 1758

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

**X**

☐ Agent

☐ Addressee

B. Received by (Printed Name)

**RECEIVED APR 21 2021**

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☒ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery


Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**Diana Esher, EPA**  
**Acting Admin Region 3**  
**1650 Arch Street**  
**Philadelphia, PA 19103**



9590 9402 3948 8060 1182 77

2. Article Number (Transfer from service label)

**7020 0640 0000 2372 1796**

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
**X**

B. Received by (Printed Name) **APR 10 2021** Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

**1650 ARCH STREET**  
**PHILADELPHIA PA 19103**  
**3PM20**

3. Service Type

<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery
<input checked="" type="checkbox"/> Certified Mail Restricted Delivery	<input checked="" type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Insured Mail	
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

D. Lee Currey, Director  
 Water and Science Administration  
 MDE  
 1800 Washington BLVD  
 Baltimore, MD 21230



9590 9402 3948 8060 1182 46

2. Article Number (Transfer from service label)

7020 0640 0000 2372 1772

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

Charles J. Allert

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

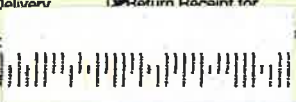
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☒ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restriction
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☒ Return Receipt for



PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt



FAQs >

Track Another Package +

Tracking Number: 70200640000023721772

Remove X



Your item was delivered to the front desk, reception area, or mail room at 11:34 am on April 20, 2021 in BALTIMORE, MD 21230.

Feedback

 **Delivered, Front Desk/Reception/Mail Room**

April 20, 2021 at 11:34 am  
BALTIMORE, MD 21230

Get Updates 

Text & Email Updates	
Tracking History	
Product Information	

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Edward Dexter  
Solid Waste Program-MDE  
1800 Washington Blvd, Suite 605  
Baltimore, MD 21230



9590 9402 3948 8060 1182 53

2. Article Number (Transfer from service label)

7020 0640 0000 2372 1802

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *Charles J. Allist*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☒ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☒ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery



FAQs >

Track Another Package +

Tracking Number: 70200640000023721802

Remove X

Your item was delivered to the front desk, reception area, or mail room at 11:34 am on April 20, 2021 in BALTIMORE, MD 21230.

Feedback

 **Delivered, Front Desk/Reception/Mail Room**

April 20, 2021 at 11:34 am  
BALTIMORE, MD 21230

Get Updates ▾

Text & Email Updates	▾
Tracking History	▾
Product Information	▾